

Committee on Resources,

Full Committee

- - Rep. James V. Hansen, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6201 - - (202) 225-2761

Witness Statement

Statement of Andy Kerr, Senior Counselor, Oregon Natural Resources Council before the Committee on Resources, U.S. House of Representatives in Klamath Falls, Oregon, June 16, 2001

My name is Andy Kerr. I am Senior Counselor to the Oregon Natural Resources Council. ONRC has been involved in conservation issues in the Klamath River Basin for a quarter century. I have been involved as long, serving as a field representative, conservation director, executive director and now senior counselor.

I won't talk today about the causes of the water crisis, other than to quote Oregon Governor John Kitzhaber:

The current water crisis in the Klamath Basin has been 150 years in the making and serves as a reminder to us all that we are stretching our natural resources beyond their limits. Even in a normal year, the water in the Klamath Basin cannot meet the current, and growing, demands for tribal, agricultural, industrial, municipal and fish and wildlife needs.

Agriculture was in trouble long before the combination of record drought and the Endangered Species Act came into play.

Implementation of the government's official biological opinions—on Klamath Project operations and their affect on the federally listed coho salmon, bald eagle, and two species of mullet—are projected to result in water conflicts between agriculture and endangered species, an average of six years out of ten. Not all years will be this bad with had a snowpack less than one-quarter of average.

These biological opinions detail the minimum amount of water necessary in the lake and the river to prevent the extinction of these species. They do not specify the water levels and flows—and the water quality—necessary to recover the species so the protections of the Endangered Species Act are no longer necessary, let alone the level to return salmon and mullet to healthy harvestable surpluses.

The State of Klamath Basin Agriculture

I do want to touch on the causes of the farm crisis in the Klamath Basin. First, it's marginal as farmland. It's at 4,000-foot elevation where frosts stay late and come early. Second, it's heavily subsidized farming, more so than most other farmlands in this nation. Besides the plethora of farm subsidy programs, both deliveries of the water and the electricity to pump it are heavily subsidized by taxpayers and ratepayers.

Currently project farmers are paying 0.6¢/kilowatt hour. I'm currently paying ten times that at my home and anticipate a rise in October of around 50%. When the contract for electricity expires in 2006, project farmers electricity costs will increase by a factor of ten to thirty.

The North American Free Trade Agreement, the General Agreement on Tariffs and Trade and the World Trade Association have caused more damage to Klamath Basin agriculture than the Endangered Species Act

ever could. Farming is in decline in the basin due to market conditions—not a shortage of water, whether due to drought or the Endangered Species Act. Processing plants for sugar beets and horseradish have closed. Canadian potatoes, Chinese onions, and Mexican sugar are flooding into this country. With Congress poised to approve the Free Trade Agreement for the Americas, it will be NAFTA times two. The globalization of trade may be beneficial to the nation's economy as a whole, but it has been mostly disastrous to farming in the Klamath Basin.

As it has been practiced in the Klamath Basin, farming is not economically, let alone environmentally sustainable. Nationally, 48% of farm income is coming from the federal taxpayers. Locally, potatoes are being raised more for the government subsidies than the market. Klamath Basin farming is in trouble; but in reality, the Endangered Species Act (ESA) is the least of their problems.

The Wrong Path: Attacking the Endangered Species Act

Attacking the Endangered Species Act is a poor strategy for the "give-me-water-or-give-me-death" crowd. First, as noted previously, it would be more on target to attack the North American Free Trade Agreement.

Second, seeking to invoke the Endangered Species Committee (the so-called "God Squad") is a bad idea. I was involved in the last time the God Squad was invoked by George Bush the elder. It did not work out well for either the timber industry or the Administration. In that case, large amounts of old-growth logging profits were involved. In this case, any "profits" are derived only from the result of massive federal subsidies. In that case, it was "timber jobs versus the spotted owl." In this case, the political debate will be framed as subsidized federal farmers raising crops at a price above market value, versus commercial fishers, Native Americans, endangered Pacific salmon, and the nation's national bird, the bald eagle. To win an exemption from the Endangered Species Act, the God Squad would have to find that the harmful activity economically imperative and no alternatives exist. Our attorneys are salivating at the prospect of the invoking the God Squad in this case.

Third, the God Squad cannot override tribal rights, the Clean Water Act, the National Environmental Policy Act or other federal law.

Fourth, it would be a futile political effort to gut the Endangered Species Act. It has been tried numerous times by opponents with a much better set of legal and political facts than in this case. Unfortunately, each time controversy arises about enforcement of the Endangered Species Act; aggrieved parties always fancy themselves as the ones who will be the "poster children" that succeed in gutting the ESA. It has not yet worked.

Fourth, attacking the underlying science supporting the biological opinions of the federal fish and wildlife agencies is probably flawed strategy as well. Every Secretary of the Interior that I've known since the Ford Administration has tried to substitute politics for science. The ESA is crystal clear on that point. The Secretary must follow the law by following the science. This is not a case is not bad science, but of science taken badly.

Even assuming that farm prices are going to increase soon and that magically the ESA was no longer an issue—exercises in irrational exuberance—, the environmental issues of the basin do not go away. Poor farming and other management practices have resulted in not only a severe lack of water quantity for fish and wildlife, but atrocious quality. In the late summer, the pH in parts of Upper Klamath Lake can be comparable to that of dishwashing detergent. The water that returns to the Klamath River is high in nitrogen

and phosphorous carried in from fields ladened with pesticides. The need for enforcement of state water quality rules under the federal Clean Water Act is undeniable.

The Right Path: Just Compensation

Having said this, I am here today to suggest a difference course than the one of endless litigation and listings. Instead I offer a proposal that was developed by conservation and farming interests in the Klamath Basin. This joint-proposal balances farming and conservation (see *A Voluntary Demand Reduction and Resource Enhancement Program for the USBR Klamath Project*, attached). Specifically it would:

1. Acquire lands or interests in water from willing sellers for fish and wildlife purposes, or for the establishment of replacement lease lands, so commercial farming can end on the national wildlife refuges.
2. Provide for the acquisition from willing sellers to re-reclaim lake, wetlands and streams for natural water storage and cleansing.
3. Ensure that federal funding of local governmental units is maintained.
4. Provide for economic transition assistance grants for local governmental units.

It is proposed—in addition to the payment of fair market value for the land—that a transition payment also be made, both of which would total \$4,000/acre. To put this in perspective, before the water was cut off in this severe drought year by a combination of an Act of God and an Act of Congress, such lands were worth perhaps \$2,500/acre. Prices have plummeted since then. \$4,000/acre is 60% above the former market value.

Precedent for such compensation exists. The federal government has bought down commercial fishing fleets. It is considering paying tobacco farmers to get out of tobacco farming.

The benefits to remaining farmers of this joint proposal would be immense. With the reduction of water demand by reducing the amount of irrigated agriculture and the concurrent increase of natural storage by the re-reclamation of reclaimed and abused lands, irrigated water supplies will be much more reliable than today—perhaps even enough to cope with a severe drought year like this one.

Conservationists negotiated this proposal will local landowners; most with roots that go back generations. They are ready to sell their lands to the federal government; there is no other buyer).

Of course, \$4,000/acre is not enough to compensate for the loss of a lifestyle. However, it is enough for most to get clear of the bank and have something left for retirement or for the kids college fund. This \$4,000/acre figure can be justified to taxpayers as a savings over the current system of farm subsidies for these lands. More importantly, it is the right thing to do.

Some of the landowners we worked with to negotiate this deal asked to testify today, but were told the witness list was already full. Others are afraid to speak up publicly about their desire to sell. Many would have sold years ago if their had been any market. Some are old, others are tired of losing money, others are tired of the uncertainty of farming these days. I'm sorry to have to note that these willing sellers have been verbally abused and threatened for their stance by some of their neighbors. One would have thought that one of the most basic of property rights is the right to sell it.

Conclusion

This joint proposal is ecologically rational, economically efficient, fiscally prudent, socially just and politically pragmatic. It has both the broad and deep support of the conservation community. I believe it to be a breakthrough in the thinking of conservation organizations. I hope that it will be a model to avoid or solve conflicts elsewhere.

For it to be successful, this joint proposal must first gain the open support of the landowners that wish to have the option to sell their land. It is necessary for such landowners to ban together against bullies who would deny them their property rights and their future.

My friend and Western writer, Terry Tempest Williams has stated that environmentalists must be "both fierce and compassionate—at once." The Oregon Natural Resources Council is strongly committed to this proposal with its:

- just compensation for affected landowners;
- commitment for community economic transition assistance; and
- maintaining federal contributions to the revenues of local governmental units.

The conservation community will use all of our powers of persuasion and political influence to see it enacted into law. There is only one specter on the horizon that could diminish our capacity to work for this joint proposal. If the conservation community has to instead use its resources to defeat yet another attack on the Endangered Species Act, our ability to advocate for this proposal will be diminished.

For this proposal to be enacted, it must pass Congress. It is up to the Oregon and California congressional delegations to lead the way.

The conservation community sees the Klamath River Basin as the "Everglades of the West". (see *The Klamath Basin's Wildlife Abundance*, attached). The federal and state governments have committed tens of billions of dollars to restore the Everglades. It can find a billion for the Klamath River Basin. The joint-proposal I am offering today is an important component to conserve and restore this great natural wonder and also provide economic justice to those affected by changing government policies. (See *Blueprint for Restoration of the Klamath Basin*, attached.)

We are not such a poor nation that we must destroy species and ecosystems, nor are we so rich that we can afford to. We are a rich enough nation to fairly compensate those who are adversely affected by changes in government policies pertaining to Native American tribal rights, the conservation of fish and wildlife, and the globalization of trade. Thank you for this opportunity to testify.

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